

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMAZIN' RAISINS INTERNATIONAL, INC.,

Plaintiff,

v.

OCEAN SPRAY CRANBERRIES, INC.,

Defendant.

Civil Action No. 1:04-cv-12679-MLW

MOTION TO AMEND JUDGMENT AND AWARD ATTORNEYS' FEES

Ocean Spray Cranberries, Inc. ("Ocean Spray") hereby moves pursuant to Federal Rule of Civil Procedure 59(e), 35 U.S.C. § 285, 28 U.S.C. § 1927 and the inherent powers of this Court to amend the judgment in the case and for an award of reasonable attorneys' fees. In support of this motion Ocean Spray states as follows:

1. On August 20, 2007 the Court granted summary judgment in favor of Ocean Spray Cranberries, Inc. ("Ocean Spray") (Docket No. 101).
2. Also on August 20, 2007 the Court entered judgment in favor of Ocean Spray. (Docket No. 102).
3. This was an exceptional case, as defined by 35 U.S.C. § 285, because it was frivolous and it was brought and maintained in bad faith.
4. Counsel for the plaintiff in this action should be held liable for the excessive costs it caused Ocean Spray to incur in defending this action pursuant to 28 U.S.C. § 1927.
5. The inherent powers of this Court authorize it to sanction the plaintiff and its counsel for their decision to bring and maintain this action.

6. Ocean Spray incurred \$533,193.96 in attorneys' fees and costs defending this action.

7. Ocean Spray seeks an award of \$379,824.00, which are the fees corresponding to the work performed by Ocean Spray's two principal attorneys on this matter.

8. The undersigned counsel has reviewed the rates and amount of time spent on this matter and based on his familiarity with rates and charges for patent litigation in this district concludes that the fees sought are reasonable.

9. With the Court's permission, pursuant the parties' joint motion (docket no. 104) Ocean Spray will submit a brief and documentation in further support of this motion on September 14, 2007.

Dated: September 4, 2007

/s/ Michael E. Zeliger
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
Michael E. Zeliger (BBO # 633654)
State Street Financial Center
One Lincoln Street
Boston, MA 02111
(617) 261-3100 Telephone
(617) 261-3175 Facsimile

William R. Woodford (*pro hac vice*)
FISH & RICHARDSON P.C.
60 South Sixth Street
Suite 3300 Dain Rauscher Plaza
Minneapolis, MN 55402
(612) 335-5070 Telephone
(612) 288-9696 Facsimile

Attorneys for Defendant
Ocean Spray Cranberries, Inc

Local Rule 7.1(A)(2) Certification

Counsel for Ocean Spray hereby certifies that he has conferred with counsel for the plaintiff and has attempted in good faith to resolve or narrow the issues presented by this motion.

/s/ Michael E. Zeliger

Michael E. Zeliger

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Michael E. Zeliger

Michael E. Zeliger